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THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AMERIS BANK, a Georgia state-
chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

Plaintiff,

vs.

ESCP CORP., an Iowa corporation,
Defendants.

Case No. 8:24-cv-00096-JWH(DFMx)

[Assigned to the Hon. John W. Holcomb]

**BALBOA CAPITAL
CORPORATION'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANT**

Complaint Filed: January 16, 2024
Trial Date: None

1 TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 12, 2024, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 9D of the 411 West 4th Street,
4 Santa Ana, California 92701-4516, the Honorable John W. Holcomb presiding,
5 plaintiff Ameris Bank, doing business as Balboa Capital Corporation (“Plaintiff” or
6 “Balboa”) will, and hereby does, apply for an entry of default judgment pursuant to
7 Federal Rules of Civil Procedure Rule 55 and Local Rules 55-1, 55-2, and 55-3,
8 against defendant ESCP Corp., an Iowa corporation (“ESCP” or “Defendant”), for a
9 judgment amount of **\$123,827.46**.

10 PLEASE TAKE FURTHER NOTICE that Balboa seeks a default judgment
11 against Defendant in the total amount of \$123,827.46, as Balboa has established (a)
12 a sum certain due and owing by Defendant to Balboa pursuant to the Equipment
13 Financing Agreements entered into by Defendant and Balboa; (b) that Defendant is
14 not in military service and is neither a minor or incompetent person; and (c) costs
15 and attorneys’ fees are properly awardable.

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1 PLEASE TAKE FURTHER NOTICE that this motion is based on this
2 Notice of Motion, the supporting Memorandum of Points and Authorities, the
3 supporting declarations of Jared T. Densen and Don Ngo, and the exhibits attached
4 thereto, the pleadings and papers filed in this action, and upon such further briefing,
5 authorities, and argument submitted to the Court prior to, or during, the hearing on
6 this matter.

7
8 DATED: June 11, 2024

SALISIAN | LEE LLP

9
10 By: 

Jared T. Densen

Neal S. Salisian

Glenn R. Coffman

11
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13 Attorneys for Plaintiff
14 AMERIS BANK d/b/a BALBOA CAPITAL
15 CORPORATION
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiff Ameris Bank, a Georgia state-chartered banking corporation, doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) submits the instant Motion for Default Judgment against defendant ESCP Corp., an Iowa corporation (“ESCP” or “Defendant”).

A. Equipment Financing Agreement No. 1.

This action involves a claim for damages by Balboa against Defendant for the breach of the written Equipment Financing Agreement No. 332195-000 (“EFA No. 1”). [See Declaration of Don Ngo (“Ngo Decl.”), ¶3, Exh. A.]

Specifically, Balboa, on the one hand, and ESCP, on the other, entered into EFA No. 1 on or about August 24, 2020. [See *id.*] Under the terms of EFA No. 1, Balboa loaned to ESCP the sum of \$69,564.70, in order to finance equipment for its business (“Collateral No. 1”). [See *id.*]

Under EFA No. 1, ESCP was required to make sixty (60) monthly payments of \$1,618.65, beginning on October 22, 2020. [See *id.*, ¶4, Exh. B.] The last payment received by Balboa was credited toward the payment due for October 22, 2023. [See *id.*] Therefore, on or about November 22, 2023, ESCP breached EFA No. 1 by failing to make the monthly payment due on that date, and thus, has remained continuously in default. [See *id.*]

At the time of Defendant’s default, in addition to late charges in the sum of \$291.36, there remained twenty-three (23) monthly payments in the amount of \$1,618.65, for a total of \$37,520.31, due to Balboa. [See *id.*, ¶5, Exh. B.] Defendant has since failed to make further payments. [See *id.*]

Pursuant to the “Default and Remedies” section on page 3 of EFA No. 1, in the event of a default, Balboa may: “... (c) accelerate and declare all sums due and to become due hereunder immediately due and payable, all future payments discounted at 3% as calculated by us ...” [See *id.*, ¶6.] Balboa’s calculation of the

1 3% discount is made pursuant to a present-value (“PV”) accounting formula that is
2 calculated to discount each future monthly accelerated payment down to what the
3 present value would in today’s dollar figure. [See *id.*] For example, a payment
4 owed exactly one year from today would be discounted by the full 3%, whereas
5 earlier payments would be discounted by less, and further payments would be
6 discounted by more. [See *id.*] Based upon this formula, Balboa calculated that the
7 amount due totaled **\$36,603.19**. [See *id.*, Exh. B.]

8 In addition, based on the amount due of \$36,603.19, Balboa is entitled to
9 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
10 November 22, 2023, the date of breach, to July 12, 2024, the date noticed for the
11 hearing of this Motion for Default Judgment for a total interest amount of
12 **\$2,344.68**, accruing at a rate of **\$10.09 per day**, until the entry of judgment. [See
13 *id.*, ¶7; see also Declaration of Jared T. Densen (“Densen Decl.”), ¶¶5-6.]

14 **B. Equipment Financing Agreement No. 2.**

15 This action also involves a claim for damages by Balboa against Defendant
16 for the breach of the written Equipment Financing Agreement No. 332195-001
17 (“EFA No. 2”). [See Ngo Decl., ¶8, Exh. C.]

18 Specifically, Balboa, on the one hand, and ESCP, on the other, entered into
19 EFA No. 2 on or about January 15, 2021. [See *id.*] Under the terms of EFA No. 2,
20 Balboa loaned to ESCP the sum of \$115,780.29, in order to finance equipment for
21 its business (“Collateral No. 2”). [See *id.*]

22 Under EFA No. 2, ESCP was required to make sixty (60) monthly payments
23 of \$2,720.40, beginning on February 13, 2021. [See *id.*, ¶9, Exh. D.] The last
24 payment received by Balboa was credited toward the payment due for October 13,
25 2023. [See *id.*] Therefore, on or about November 13, 2023, ESCP breached EFA
26 No. 2 by failing to make the monthly payment due on that date, and thus, has
27 remained continuously in default. [See *id.*]

1 At the time of Defendant's default, in addition to late charges in the sum of
2 \$979.34, there remained twenty-seven (27) monthly payments in the amount of
3 \$2,720.40, for a total of \$77,150.54, due to Balboa. [See *id.*, ¶9.] Defendant has
4 since failed to make further payments. [See *id.*]

5 Pursuant to the "Default and Remedies" section on page 3 of EFA No. 2, in
6 the event of a default, Balboa may: "... (c) accelerate and declare all sums due and
7 to become due hereunder immediately due and payable, all future payments
8 discounted at 3% as calculated by us ..." [See *id.*, ¶11.] Balboa's calculation of the
9 3% discount is made pursuant to a present-value ("PV") accounting formula that is
10 calculated to discount each future monthly accelerated payment down to what the
11 present value would in today's dollar figure. [See *id.*] For example, a payment
12 owed exactly one year from today would be discounted by the full 3%, whereas
13 earlier payments would be discounted by less, and further payments would be
14 discounted by more. [See *id.*] Based upon this formula, Balboa calculated that the
15 amount due totaled **\$72,268.69**. [See *id.*]

16 In addition, based on the amount due of \$72,268.69, Balboa is entitled to
17 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
18 November 13, 2023, the date of breach, to July 12, 2024, the date noticed for the
19 hearing of this Motion for Default Judgment for a total interest amount of
20 **\$2,344.68**, accruing at a rate of **\$19.79 per day**, until the entry of judgment. [See
21 *id.*, ¶12; see also Densen Decl., ¶¶8-9.]

22 **C. Attorneys' Fees and Costs.**

23 Pursuant to EFA No. 1 and No. 2 (the "EFAs"), Balboa is entitled to recover
24 its attorneys' fees and costs from Defendant. [See Densen Decl., ¶¶7, 10, Exh. E.]
25 The amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of
26 **\$2,796.19** for EFA No. 1, and **\$4,490.74** for EFA No. 2. [See *id.*] Balboa has
27 indeed incurred **\$515.00**, in recoverable costs - \$405 for filing of the Complaint,
28 \$110.00 for service upon ESCP. [See *id.*, Exh. E.]

D. Motion for Default Judgment.

Balboa's Motion for Default Judgment satisfies the procedural requirements of Local Rule 55-1 and 55-2, and Federal Rule of Civil Procedure 55(b). Balboa filed its Complaint and case-initiating documents on January 16, 2024. [See Dkts. 1-4.] ESCP was properly served on February 29, 2024, pursuant to Federal Rule of Civil Procedure 4. [See Dkt. 10.] On March 22, 2024, Balboa filed its Request for Clerk to Enter Default against Defendant ("Default Entry Request"), and the Clerk entered the default against the Defendant on March 26, 2024. [See Dkts. 11-12.]

Defendant is not a minor or an incompetent person, nor is Defendant currently in the military service or otherwise exempt from a default judgment under the Servicemembers Civil Relief Act ("SCRA"). [See Densen Decl., ¶4.]

Moreover, this Court has subject matter jurisdiction over the instant action. The amount in controversy, as alleged in the Complaint and as set forth herein, exceeds \$75,000. [See Dkt. 1.] Plaintiff Balboa was and still operates as a California corporation, with its principal place of business in Orange County, California. [See Dkt. 1, ¶1; see also Densen Decl., ¶11.] Balboa is also now a wholly owned subsidiary of Ameris Bank, and operating as a division of Ameris Bank, a Georgia state-chartered banking corporation, and accordingly, Balboa is a citizen of the State of California, as well as the State of Georgia, via its parent company, Ameris Bank. [See *id.*]

Defendant ESCP is an Iowa corporation, incorporated in Iowa, and with its principal place of business in Scott County, Iowa. [See *id.*, ¶12, Exh. F.] As such, there exists complete diversity amongst the parties. [See *id.*, ¶13.]

As set forth below, a default judgment should be entered against the Defendant since Balboa satisfies all seven factors under *Eitel*. Moreover, Balboa has adequately proven its damages. Thus, Balboa respectfully requests that this Court grant its request for a default judgment against Defendant in the amount of **\$123,827.46**.

1 **II. LEGAL ARGUMENT**

2 “When a party against whom a judgment for affirmative relief is sought has
3 failed to plead or otherwise defend,” the Court may enter a judgment of default
4 upon Plaintiff’s Motion after an entry of default. *See* Fed. R. Civ. P. 55. Local
5 Rule 55 sets forth the procedural requirements that must be satisfied by a party
6 moving for a default judgment. Balboa’s Motion has satisfied such requirements.

7 Here, Balboa filed its Complaint and case-initiating documents on January
8 16, 2024. [See Dkts. 1-4.] ESCP was properly served on February 29, 2024,
9 pursuant to Federal Rule of Civil Procedure 4. [See Dkt. 10.] On March 22, 2024,
10 Balboa filed its Request for Clerk to Enter Default against Defendant (“Default
11 Entry Request”), and the Clerk entered the default against the Defendant on March
12 26, 2024. [See Dkts. 11-12.]

13 Defendant is not a minor or an incompetent person, nor is Defendant
14 currently in the military service or otherwise exempt from a default judgment under
15 the SCRA. [See Densen Decl., ¶4.]

16 The Ninth Circuit follow the seven *Eitel* factors in deciding whether to enter
17 a default judgment:

18 (1) the possibility of prejudice to the plaintiff; (2) the merits
19 of plaintiff’s substantive claim; (3) the sufficiency of the
20 complaint; (4) the sum of money at stake in the action; (5)
21 the possibility of a dispute concerning material facts; (6)
whether the default was due to excusable neglect; and (7)
the strong policy underlying the Federal Rules of Civil
Procedure favoring decisions on the merits.

22 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A plaintiff need not
23 prove that all seven factors weigh in its favor, as courts *may* consider these factors
24 in their discretion on whether to enter a default judgment. *See id.*

25 Here, the underlying facts in this action show that all seven of the *Eitel*
26 factors weigh in Balboa’s favor, and thus, supports the entry of default judgment.

1 **A. Plaintiff Will Be Highly Prejudiced If Its Motion for Default**
2 **Judgment Is Denied.**

3 A situation in which a plaintiff will be without any other recourse or recovery
4 should its default judgment application be denied qualifies as prejudice. *See*
5 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

6 Here, Balboa has submitted its Motion for Default Judgment as a last resort
7 due to Defendant's deliberate unwillingness to accept responsibility for its actions
8 or even acknowledge Balboa's allegations.

9 The fact remains that Balboa, pursuant to EFA No. 1, financed Collateral No.
10 1 for ESCP, with ESCP agreeing to make sixty (60) monthly payments of
11 \$1,618.65, for which twenty-three (23) monthly payments, in addition to late
12 charges in the sum of \$291.36, for a total of \$37,520.31, still remained due to
13 Balboa at the time of Defendant's default. [*See* Ngo Decl., ¶¶4-5, Exh. B.] Once
14 Balboa accelerated payments and applied the 3% PV discount, the amount due
15 totaled **\$36,603.19**. [*See id.*, ¶6, Exh. B.]

16 Moreover, the fact remains that Balboa, pursuant to EFA No. 2, financed
17 Collateral No. 2 for ESCP, with ESCP agreeing to make sixty (60) monthly
18 payments of \$2,720.40, for which twenty-seven (27) monthly payments, in addition
19 to late charges in the sum of \$979.34, for a total of \$77,150.54, still remained due
20 to Balboa at the time of Defendant's default. [*See id.*, ¶¶9-10, Exh. D.] Once
21 Balboa accelerated payments and applied the 3% PV discount, the amount due
22 totaled **\$72,268.69**. [*See id.*, ¶11, Exh. D.]

23 Balboa has made demands for its monies from Defendant, all of which
24 Defendant has failed to pay back. [*See id.*, ¶13.]

25 Balboa filed its Complaint in this action to recover the monies owed on it,
26 but Defendant has been unwilling to participate in, or otherwise acknowledge, the
27 litigation. Balboa's Motion for Default Judgment is its final option for an attempt
28 at recovery, and without the Court granting the default judgment, Balboa will be

1 prejudiced and be denied its right to a judicial resolution of its presented claims.
2 *See PepsiCo*, 238 F.Supp.2d at 1177.

3 Moreover, if Balboa's Motion for Default Judgment is denied, it will suffer a
4 significant loss due to no fault of its own, and Defendant will obtain a significant
5 windfall of over \$123,827.46. Not only will the deliberate nonaction by Defendant
6 and their continued stalling techniques be unjustly rewarded, but Balboa will
7 effectively be penalized for its procedurally proper demands for the return of its
8 monies available through the court system's proper channels.

9 Balboa will be substantially prejudiced, especially with no other available
10 recourse, should its Motion for Default Judgment be denied, and thus, further
11 supports the Default Judgment against Defendant to be granted by this Court.

12 **B. Plaintiff Has A High Likelihood Of Success On The Merits Of Its**
13 **Substantive Claims And Its Complaint Is Sufficiently Pled.**

14 "The general rule of law is that upon default[,] the factual allegations of the
15 complaint, except those relating to the amount of damages, will be taken as true."
16 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Courts often
17 consider the second (merits of the claim) and third (sufficiency of the complaint)
18 factors under *Eitel* together. *See PepsiCo*, 238 F.Supp.2d at 1177.

19 The elements for a breach of contract are: (1) the existence of a contract, (2)
20 performance by the plaintiff of its obligations under the contract, (3) breach of the
21 contract by the defendant, and (4) resulting damages proximately caused by the
22 defendant's breach of contract. *Reichert v. Gen. Ins. Co.*, 68 Cal.2d 822, 830
23 (1968); *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal.App.3d 887, 916 (1971); *see*
24 *also* Civ. Code §§ 1620, 3300; and RESTATEMENT 2d. CONTRACTS § 235(2).

25 Here, all elements are met. Specifically, Balboa, on the one hand, and ESCP,
26 on the other, entered into EFA No. 1, under which Balboa loaned to ESCP the sum
27 of \$69,564.70, in order to finance Collateral No. 1 for its business. [See Ngo Decl.,
28 ¶3, Exh. A.]

1 Under EFA No. 1, ESCP was required to make sixty (60) monthly payments
2 of \$1,618.65, beginning on October 22, 2020. [See *id.*, ¶4, Exh. B.] The last
3 payment received by Balboa was credited toward the payment due for October 22,
4 2023. [See *id.*] Therefore, on or about November 22, 2023, ESCP breached EFA
5 No. 1 by failing to make the monthly payment due on that date, and thus, has
6 remained continuously in default. [See *id.*]

7 At the time of Defendant's default, in addition to late charges in the sum of
8 \$291.36, there remained twenty-three (23) monthly payments in the amount of
9 \$1,618.65, for a total of \$37,520.31, due to Balboa. [See *id.*, ¶5, Exh. B.] Once
10 Balboa accelerated payments and applied the 3% PV discount, the amount due
11 totaled **\$36,603.19**. [See *id.*, ¶6, Exh. B.] Defendant has since failed to make
12 further payments. [See *id.*]

13 Similarly, all elements are also met pertaining to EFA No. 2. Specifically,
14 Balboa, on the one hand, and ESCP, on the other, entered into EFA No. 2 on or
15 about January 15, 2021. [See *id.*, ¶8, Exh. C.] Under the terms of EFA No. 2,
16 Balboa loaned to ESCP the sum of \$115,780.29, in order to finance Collateral No. 2
17 for its business. [See *id.*]

18 Under EFA No. 2, ESCP was required to make sixty (60) monthly payments
19 of \$2,720.40, beginning on February 13, 2021. [See *id.*, ¶9, Exh. D.] The last
20 payment received by Balboa was credited toward the payment due for October 13,
21 2023. [See *id.*] Therefore, on or about November 13, 2023, ESCP breached EFA
22 No. 2 by failing to make the monthly payment due on that date, and thus, has
23 remained continuously in default. [See *id.*]

24 At the time of Defendant's default, in addition to late charges in the sum of
25 \$979.34, there remained twenty-seven (27) monthly payments in the amount of
26 \$2,720.40, for a total of \$77,150.54, due to Balboa. [See *id.*, ¶10, Exh. D.] Once
27 Balboa accelerated payments and applied the 3% PV discount, the amount due
28

1 totaled **\$72,268.69**. [*See id.*, ¶11, Exh. D.] Defendant has since failed to make
2 further payments. [*See id.*]

3 There is no doubt, and it cannot be disputed that: (1) Balboa and ESCP
4 entered into EFA No. 1 and No. 2; (2) ESCP received the loan in order to finance
5 Collateral No. 1 and No. 2 for its business; (3) ESCP ceased making payments
6 pursuant to EFA No. 1 and No. 2; and (4) Balboa has suffered and continues to
7 suffer damages due to Defendant's continued nonpayment of both. Thus, Balboa
8 has a substantially high likelihood in succeeding on the merits of its claims. In fact,
9 no known defenses exist to any of the material facts.

10 **C. The Sum Of Money At Stake Favors An Entry Of A Default**
11 **Judgment Against Defendant.**

12 As a general rule, courts factor the sum of money at stake on a case-by-case
13 basis, and in relation to the other factors influencing whether to enter default
14 judgment. *See Eitel*, 782 F.2d at 1472 (default judgment was denied where plaintiff
15 was seeking \$3 million in damages *and* the parties disputed material facts). This
16 requires the court to assess whether the recovery sought is proportional to the harm
17 caused by defendant's conduct. *See Walters v. Statewide Concrete Barrier, Inc.*,
18 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006) (“[i]f the
19 sum of money at issue is reasonably proportionate to the harm caused by the
20 defendant's actions, then default judgment is warranted”).

21 In *Penpower Tech, Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083 (N.D. Cal.
22 2008), despite reasoning that plaintiff's request for \$677,075.37 in treble damages,
23 \$500,000.00 in punitive damages, \$100,000.00 in statutory damages, attorneys'
24 fees of \$16,497.00, and costs of \$2,005.00, were “speculative” and weighed against
25 default judgment, the court nevertheless granted plaintiff's default judgment.

26 Here, Balboa seeks compensatory damages pursuant to EFA No. 1 in the
27 amount of **\$42,721.15**; prejudgment interest from November 22, 2023, the date of
28 breach, to July 12, 2024, the date noticed for the hearing of this Motion for Default

1 Judgment, in the amount of **\$2,344.68**, plus **\$10.09 per day** until the entry of
2 judgment; statutory attorneys' fees, in the amount of **\$2,796.19**; and costs in the
3 amount of **\$515.00**. [*See* Densen Decl., ¶¶5-7, Exh. E.]

4 Moreover, Balboa seeks compensatory damages pursuant to EFA No. 2 in
5 the amount of **\$72,268.69**; prejudgment interest from November 13, 2023, the date
6 of breach, to July 12, 2024, the date noticed for the hearing of this Motion for
7 Default Judgment, in the amount of **\$4,808.97**, plus **\$19.79 per day** until the entry
8 of judgment; statutory attorneys' fees, in the amount of **\$4,490.74**; and costs in the
9 amount of **\$515.00**. [*See* Densen Decl., ¶¶8-10.]

10 The damages sought are contractually-based and arise out of the clear terms
11 and obligations of EFA No. 1 and No. 2; the prejudgment interest was calculated at
12 the statutory rate of ten percent (10%) per annum; and the attorneys' fees requested
13 are fixed by Local Rule 55-3. [*See id.*, ¶¶7, 10.]

14 As such, the sum of money sought is reasonable and far from speculative. It
15 is also substantially less than the \$3 million sought in *Eitel*, in which this sum, and
16 other factors, weighed in the favor of denying default judgment. And it is also
17 substantially less than the roughly \$1.3 million sought in *Penpower Tech*, in which
18 default judgment was granted, despite the sum of money being deemed
19 "speculative."

20 Thus, the sum of money sought in this action weighs in the favor of granting
21 default judgment, especially in the light of the other seven *Eitel* factors, and due to
22 the certainty and reasonableness of the sum.

23 **D. There Are No Material Facts That Are Reasonably In Dispute.**

24 "The general rule of law is that upon default[,], the factual allegations of the
25 complaint, except those relating to the amount of damages, will be taken as true."
26 *See Geddes, supra*, 559 F.2d at 560. Where a plaintiff's complaint is well-pleaded
27 and the defendants make no effort to properly respond, the likelihood of disputed
28

1 facts is very low. *See Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F.Supp.2d
2 916, 921 (C.D. Cal. 2010).

3 As thoroughly detailed in Section II.B., *supra*, there are no material facts that
4 are reasonably in dispute.

5 Here, specifically, Balboa, on the one hand, and ESCP, on the other, entered
6 into EFA No. 1, under which Balboa loaned to ESCP the sum of \$69,564.70, in
7 order to finance Collateral No. 1 for its business. [*See* Ngo Decl., ¶3, Exh. A.]

8 Under EFA No. 1, ESCP was required to make sixty (60) monthly payments
9 of \$1,618.65, beginning on October 22, 2020. [*See id.*, ¶4, Exh. B.] The last
10 payment received by Balboa was credited toward the payment due for October 22,
11 2023. [*See id.*] Therefore, on or about November 22, 2023, ESCP breached EFA
12 No. 1 by failing to make the monthly payment due on that date, and thus, has
13 remained continuously in default. [*See id.*]

14 At the time of Defendant's default, in addition to late charges in the sum of
15 \$291.36, there remained twenty-three (23) monthly payments in the amount of
16 \$1,618.65, for a total of \$37,520.31, due to Balboa. [*See id.*, ¶5, Exh. B.] Once
17 Balboa accelerated payments and applied the 3% PV discount, the amount due
18 totaled **\$36,603.19**. [*See id.*, ¶6, Exh. B.] Defendant has since failed to make
19 further payments. [*See id.*]

20 Moreover, Balboa, on the one hand, and ESCP, on the other, entered into
21 EFA No. 2, under which Balboa loaned to ESCP the sum of \$115,780.29, in order
22 to finance Collateral No. 2 for its business. [*See id.*, ¶9.]

23 Under EFA No. 2, ESCP was required to make sixty (60) monthly payments
24 of \$2,720.40, beginning on February 13, 2021. [*See id.*, ¶9, Exh. D.] The last
25 payment received by Balboa was credited toward the payment due for October 13,
26 2023. [*See id.*] Therefore, on or about November 13, 2023, ESCP breached EFA
27 No. 2 by failing to make the monthly payment due on that date, and thus, has
28 remained continuously in default. [*See id.*]

1 At the time of Defendant's default, in addition to late charges in the sum of
2 \$979.34, there remained twenty-seven (27) monthly payments in the amount of
3 \$2,720.40, for a total of \$77,150.54, due to Balboa. [See *id.*, ¶10, Exh. D.] Once
4 Balboa accelerated payments and applied the 3% PV discount, the amount due
5 totaled **\$72,268.69**. [See *id.*, ¶11, Exh. D.] Defendant has since failed to make
6 further payments. [See *id.*]

7 Defendant cannot dispute any of the facts in any way or make any reasonable
8 arguments surrounding any of the material facts in this action. If anything,
9 Defendant's refusal to participate in, or even acknowledge the litigation, is evidence
10 that no such defense exists.

11 **E. Defendant's Default Is Not The Result Of Excusable Neglect.**

12 Excusable neglect is not found where a defendant who was properly served
13 simply ignored the deadline to respond. See *NewGen, LLC v. Safe Cig, LLC*, 804
14 F.3d 606, 616 (9th Cir. 2016) (adding that defendant's counsel contacting plaintiff's
15 counsel after default had been entered did not constitute to "excusable neglect"). In
16 fact, courts have required some showing of good faith by the defaulted defendant to
17 constitute "excusable neglect." See *Eitel*, 782 F.2d at 1471-72 (defendant's failure
18 to answer was held to be excusable neglect in light of ongoing settlement
19 negotiations); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (finding
20 excusable neglect where defendant filed an answer past the deadline and on the
21 same day that the motion for default judgment was filed); *O'Connor v. State of*
22 *Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (excusable neglect was found where
23 defendant has good faith of a timely answer); *Educational Serv., Inc. v. Maryland*
24 *State Board for Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983) (excusable
25 neglect found where defendant had appeared in the action and opposed a request for
26 a preliminary injunction in which the party had set forth its defenses); *McKnight v.*
27 *Webster*, 499 F.Supp. 420, 424 (E.D. PA 1980) (excusable neglect found where
28

1 defendant sought an extension of time to respond, but a default judgment was
2 sought in the interim).

3 Where the defendants “were properly served with the Complaint, the notice
4 for the entry of default, as well as documents in support of the instant [default
5 judgment application],” favors this factor for the entry of default judgment. *See*
6 *Shanghai Automation Instrument Co. Ltd. v. Kuei*, 194 F.Supp.2d 995, 1005 (N.D.
7 Cal. 2001).

8 Here, Defendant failed to make any showing whatsoever that their
9 unwillingness to participate in the litigation stemmed from, or was in any way due
10 to, excusable neglect. ESCP was properly served by personally leaving copies of
11 them with Jackie Patterson – an employee authorized to accept service for BNPN
12 Agent, LLC, as the registered agent for service of process of ESCP at 1620 5th
13 Ave., Ste 101, Moline, IL 61265. [See Dkt. 10.]

14 Further, Defendant was additionally served at the same address thereafter
15 with the Default Entry Request. [See Dkt. 11.] Defendant has not yet made any
16 appearance in the action, and thus, has not made any effort to answer, defend, or
17 otherwise participate, in this action.

18 As detailed above, courts have found for excusable neglect only in cases in
19 which a defendant makes good faith showing that the defendant attempts to
20 participate in the litigation to address and defend the allegations set forth against the
21 defendant. Declining to respond to a complaint after proper service (even in the
22 case where defendant’s counsel contacts plaintiff’s counsel after the entry of
23 default), does not warrant a finding of excusable neglect. *See NewGen*, 804 F.3d at
24 616.

25 Here, Defendant has failed to acknowledge their wrongdoings and the
26 allegations they face, even in the slightest degree. Instead, Defendant has blatantly
27 ignored Balboa’s Complaint and all other papers filed thereafter. Rather,
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1 Defendant's course of action in response to Balboa's Complaint, or the apparent
2 lack thereof, is intentional, and thus, would not constitute excusable neglect.

3 **F. Policy Concerns Favor Default Judgment In This Matter.**

4 Although courts have expressed that as a general rule, policy favors decisions
5 on the merits, cases should be decided on its merits only when *reasonably possible*.
6 *See Pena v. Seguros La Comercia, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)
7 (emphasis added). The policy preference to decide a case on its merits is not
8 dispositive, and thus, does not preclude a court from granting a default judgment.
9 *See Penpower Tech, Ltd.*, 627 F.Supp.2d at 1093 (defendants' failure to respond to
10 a Complaint makes a case decision on its merits impractical, if not, impossible).

11 Here, even the policy concerns to decide a case on its merits favor Balboa to
12 grant Balboa's request for a default judgment. As detailed in II.E., *supra*,
13 Defendant has made it abundantly clear that they will not participate in this
14 litigation, or even acknowledge the instant action. Defendant has deliberately
15 chosen a course of action to simply ignore Balboa and its claims against them,
16 including their own liability. Thus, the Court's decision will not be based on the
17 merits of this case since there is no reasonable possibility at this point given
18 Defendant's refusal to participate in this litigation.

19 Moreover, policy concerns certainly do not weigh in favor of rewarding
20 Defendant's for their unwillingness to account for their liability to Balboa, and the
21 extremely prejudicial windfall they would receive should their deliberate silence
22 and stalling techniques be rewarded, at Balboa's expense. *See* Section II.A., *supra*.

23 **G. Plaintiff Has Proven Its Damages.**

24 Under EFA No. 1, ESCP was required to make sixty (60) monthly payments
25 of \$1,618.65, beginning on October 22, 2020. [*See id.*, ¶4, Exh. B.] The last
26 payment received by Balboa was credited toward the payment due for October 22,
27 2023. [*See id.*] Therefore, on or about November 22, 2023, ESCP breached EFA
28

1 No. 1 by failing to make the monthly payment due on that date, and thus, has
2 remained continuously in default. [*See id.*]

3 At the time of Defendant's default, in addition to late charges in the sum of
4 \$291.36, there remained twenty-three (23) monthly payments in the amount of
5 \$1,618.65, for a total of \$37,520.31, due to Balboa. [*See id.*, ¶5, Exh. B.] Once
6 Balboa accelerated payments and applied the 3% PV discount, the amount due
7 totaled **\$36,603.19**. [*See id.*, ¶6, Exh. B.] Defendant has since failed to make
8 further payments. [*See id.*]

9 In addition, based on the amount due of \$36,603.19, Balboa is entitled to
10 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
11 November 22, 2023, the date of breach, to July 12, 2024, the date noticed for the
12 hearing of this Motion for Default Judgment, for a total interest amount of
13 **\$2,344.68**, accruing at a rate of **\$10.09 per day**, until the entry of judgment. [*See*
14 *id.*, ¶7; *see also* Densen Decl., ¶¶5-7, Exh. E.]

15 Moreover, Balboa, on the one hand, and ESCP, on the other, entered into
16 EFA No. 2, under which Balboa loaned to ESCP the sum of \$115,780.29, in order
17 to finance Collateral No. 2 for its business. [*See id.*, ¶9.]

18 Under EFA No. 2, ESCP was required to make sixty (60) monthly payments
19 of \$2,720.40, beginning on February 13, 2021. [*See id.*, ¶9, Exh. D.] The last
20 payment received by Balboa was credited toward the payment due for October 13,
21 2023. [*See id.*] Therefore, on or about November 13, 2023, ESCP breached EFA
22 No. 2 by failing to make the monthly payment due on that date, and thus, has
23 remained continuously in default. [*See id.*]

24 At the time of Defendant's default, in addition to late charges in the sum of
25 \$979.34, there remained twenty-seven (27) monthly payments in the amount of
26 \$2,720.40, for a total of \$77,150.54, due to Balboa. [*See id.*, ¶10, Exh. D.] Once
27 Balboa accelerated payments and applied the 3% PV discount, the amount due
28

1 totaled **\$72,268.69**. [*See id.*, ¶11, Exh. D.] Defendant has since failed to make
2 further payments. [*See id.*]

3 In addition, based on the amount due of \$72,268.69, Balboa is entitled to
4 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
5 November 13, 2023, the date of breach, to July 12, 2024, the date noticed for the
6 hearing of this Motion for Default Judgment, for a total interest amount of
7 **\$4,808.97**, accruing at a rate of **\$19.79 per day**, until the entry of judgment. [*See*
8 *id.*, ¶12; *see also* Densen Decl., ¶¶8-10.]

9 Pursuant to the EFAs, Balboa is entitled to recover its attorneys' fees and
10 costs from Defendant. [*See* Densen Decl., ¶¶7,10, Exh. E.] The amount of
11 reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$2,796.19** for
12 EFA No. 1 and **\$4,490.74** for EFA No. 2. [*See id.*] Balboa has incurred **\$515.00**,
13 in recoverable costs. [*See id.*]

14 Altogether, this totals out to **\$123,827.46** (as of July 12, 2024), calculated as
15 follows:

16 EFA No. 1

- 17 - Amount Owed: \$ 36,603.19
18 - Prejudgment Interest: \$ 2,344.68
19 - Attorneys' Fees: \$ 2,796.19

20 EFA No. 2

- 21 - Amount Owed: \$ 72,268.69
22 - Prejudgment Interest: \$ 4,808.97
23 - Attorneys' Fees: \$ 4,490.74

24 Costs

- 25 - Recoverable Costs: \$ 515.00

26 **Total** **\$123,827.46**

1 **III. CONCLUSION**

2 Based on Balboa's Complaint, Motion for Default Judgment, and all
3 supporting papers, Balboa respectfully requests that the Court grant its Motion for
4 Default Judgment against Defendant, in the total amount of **\$123,827.46**.

5
6 DATE: June 11, 2024

SALISIAN | LEE LLP

7
8 By: 

9 Jared T. Densen

10 Neal S. Salisian

11 Glenn R. Coffman

12 Attorneys for Plaintiff
13 AMERIS BANK d/b/a BALBOA CAPITAL
14 CORPORATION
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